

U.S. DISTRICT COURT
DISTRICT OF VERMONT
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UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF VERMONT

CENTURY INTERNATIONAL ARMS, INC.)
and CENTURY ARMS, INC.,)
Plaintiffs/Counterclaim Defendants)

v.)

Docket No. 5:12-cv-114

M+M, INC.,)
Defendant/Counterclaim Plaintiff)

SECOND AMENDED COMPLAINT

Plaintiffs Century International Arms, Inc., and Century Arms, Inc. (collectively
“Century”), by their attorneys Gravel & Shea PC, for their Amended Complaint against M+M,
Inc. (“M+M”), allege as follows:

Introduction

1. Century is in the business of purchasing surplus firearms from overseas and, after remanufacturing them to be compliant with U.S. law, reselling them to licensed dealers and law enforcement personnel.

2. Century has enjoyed a long-term contractual relationship with C.N. Romarm S.A. (“Romarm”) and its affiliated factory, S.C. Fabrica De Arme Cugir S.A. (“FAC”), including the exclusive right to purchase certain firearms. However, Century has learned that Defendant M+M has purchased, and continues to purchase, such firearms from Romarm and FAC.

gravel &
shea

ATTORNEYS AT LAW

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A PROFESSIONAL CORPORATION

3. M+M has ignored Century's demand that it stop interfering with Century's contractual relations, so Century now sues for injunctive relief, compensatory damages, and all other appropriate relief as described below.

Parties

4. Century is a Vermont corporation, with its principal place of business in Fairfax, Vermont. Century is one of the largest importers of surplus firearms and accessories in the United States.

5. On information and belief, M+M, Inc., is a Colorado corporation, with its principal place of business in Eastlake, Colorado. M+M is a wholesale firearms dealer.

Jurisdiction and Venue

6. The Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a), as Century International Arms, Inc., and Century Arms, Inc., are citizens of Vermont and M+M is a citizen of Colorado. The amount in controversy is over \$75,000.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a).

Facts

8. On information and belief, Romarm – owned by the Romanian government – is the largest supplier of military equipment and ammunition in Romania, and exports its products to countries all over the world. Its affiliated factory, FAC, is located in Cugir, Romania.

9. For over ten years, Century has been purchasing firearms from Romarm/FAC. Century has purchased millions of dollars in firearms during that time.

10. Romarm/FAC and Century have entered into numerous contracts, annexes and addenda to those contracts, memoranda of understanding, and business cooperation agreements

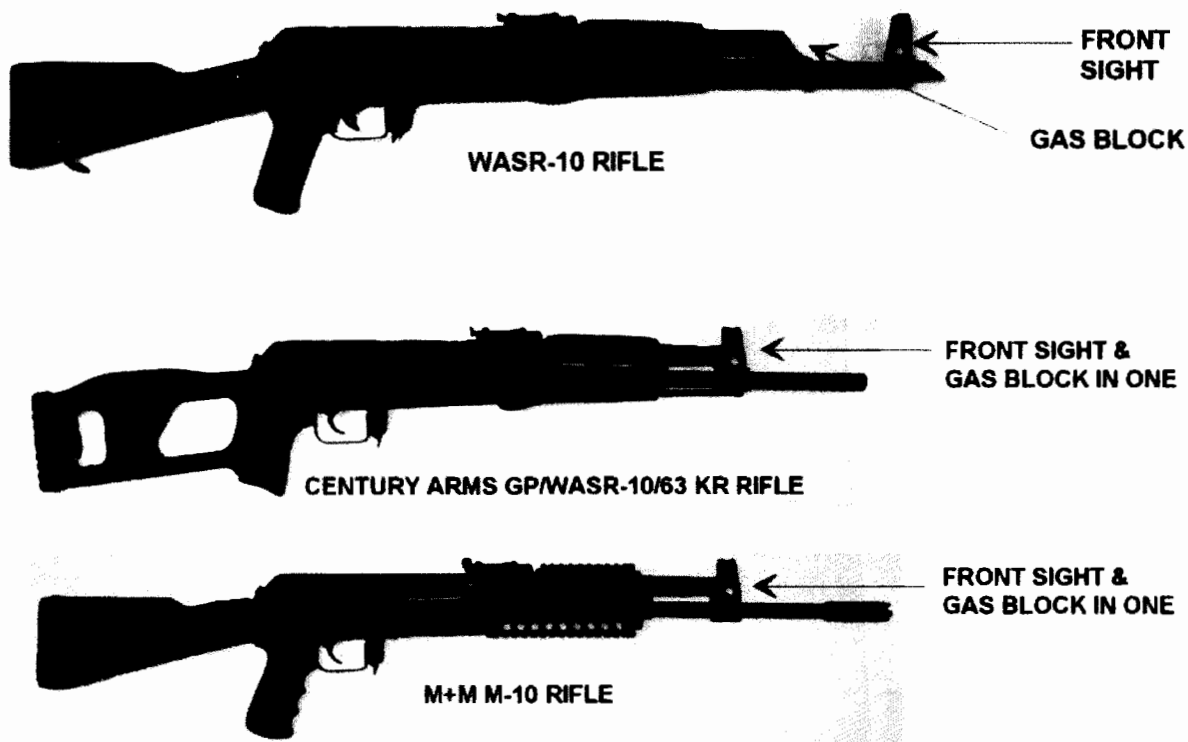
during their ten-year relationship. Certain of the agreements contain dispute resolution provisions, requiring Romarm/FAC and Century to participate in arbitration in Paris under international rules. Century and M+M are not parties to any such agreement.

11. Since M+M began interfering with Century's contracts with Romarm/FAC in 2011, the following purchase contracts have controlled Century's relationship with Romarm/FAC: (1) a three-year contract numbered C2.5866 and dated March 22, 2011 (the "5866 Contract"), (2) a memorandum of understanding ("MOU") signed with the 5866 Contract, (3) a MOU signed January 24, 2012, (4) a MOU signed March 21, 2012, (5) a four-year contract numbered C1.7466 and dated January 12, 2013 (the "7466 Contract"), (6) Addendum No. 1 to the 7466 Contract, signed October 19, 2013, and (7) Addendum No. 2 to the 7466 Contract, signed March 18, 2013. Together, these seven written agreements will be referred to as the "Purchase Contracts."

12. The Purchase Contracts sets forth the rights and obligations of Century, Romarm, and FAC. Specifically, they require FAC as manufacturer, and Romarm as seller, to supply Century with a certain number of firearms each month. In exchange, Century agreed to pay Romarm, on average, a minimum of \$1.35 million per quarter, and a minimum of \$350,000 per month. Century has, thus far, fulfilled its obligations under the Purchase Contracts (and all previous contracts). Romarm/FAC, however, has failed to deliver the required quantity of firearms to Century under the Purchase Contracts.

13. Romarm/FAC and Century also agreed to develop new products together to sell in the United States. M+M, however, is interfering; usurping these products and opportunities for itself. For example, Romarm produces a WASR-10 Rifle, which is in the AK family of rifles. Century designed and owns a modification of the WASR-10 Rifle called the GP/WASR-

10/63 KR Rifle, which complies with United States' firearms laws and is manufactured exclusively by Romarm/FAC. One of the stylistic modifications made by Century was to merge the front sight and gas block mechanism, shifting the front sight to the middle of the barrel. M+M is currently selling in the United States an "M-10" rifle, which shares this unique modification and – with the exception of a few aftermarket aesthetic changes – is almost identical to the uniquely modified rifle created by Century. The three rifles are shown below:



14. In addition to the Purchase Contracts, Century Arms, Inc. and Romarm/FAC entered into a Business Promotion and Protection Agreement (the "BPPA") on March 23, 2010, which gives Century a right of first refusal on all firearms manufactured by Romarm/FAC for sale in the United States. Under the BPPA, the parties agreed to be loyal to each other and work together to promote the sale of Romanian firearms and accessories in the United States.

15. Specifically, the BPPA prohibits Romarm/FAC from selling the items covered by the agreement to other companies who would distribute them in the United States unless they are first offered to Century.

16. However, at least part of the reason Romarm/FAC is not satisfying the Purchase Contracts' requirements is that it is violating the BPPA by selling firearms to M+M.

17. On information and belief, since April 2011, Romarm/FAC has supplied M+M with more than 75,000 firearms and accessories. M+M, in turn, is selling these firearms and accessories in the United States.

18. Century is entitled to all of those firearms and accessories under the BPPA and the Purchase Contracts. M+M's usurping of these firearms and accessories has deprived Century of millions of dollars in revenue and in excess of \$7 million in profit since 2011.

19. At the same time that Romarm and FAC have been selling these firearms to M+M, they have not been filling the orders required by the Purchase Contracts, failing to deliver in excess of 70,000 firearms and accessories to Century since signing the 2011 Contract.

20. As a result of M+M's interference with the Purchase Contracts and the BPPA, Century has been unable to fill its customers' orders, harming Century's reputation and crippling its ability to meet demand.

21. These actions caused, and continue to cause, Century significant damage. Century has invested substantial money and time into developing a market for Romanian firearms in the United States. In addition, these lost sales represent tangible lost revenue for Century.

22. By letter dated September 2, 2011, Century formally notified M+M of the BPPA with Romarm/FAC, and that M+M's purchase of certain firearms from Romarm was interfering

with Century's contracts and business. *See* Exhibit A. M+M replied by letter on September 7, 2011, stating that it would take Century's letter "into consideration." *See* Exhibit B. M+M continued to interfere with the Purchase Contracts and the BPPA.

23. M+M was aware of Century's exclusive relationship with Romarm and FAC prior to the September 2, 2011 letter. Since at least May of 2011, M+M has been actively working to disrupt Century's relationship with Romarm and advising Romarm to violate its agreements with Century. *See* Exhibit C.

24. M+M continues its wrongful acts which, upon information and belief, are being facilitated in whole or in part by two foreign companies, InterOrdinance Austria and CIT Bahamas. In a recent editorial in the Romanian newspaper Cotidianul, a Romanian Member of Parliament accused Romarm's leadership of criminal activity related to its dealings with InterOrdinance Austria, CIT Bahamas, and M+M. Plaintiffs are not yet in a position to make additional allegations in this regard, but upon information and belief, believes that discovery (and/or additional investigation) will reveal further wrongful conduct, some of which may be beyond the scope of this action.

Tortious Interference with Contract

25. Century repeats and reavers each and every one of the foregoing allegations as though fully set forth herein.

26. Valid contracts exist between Century and Romarm/FAC.

27. M+M knows that such valid contracts exist between Century and Romarm/FAC.

28. M+M is aware that Century is, by contract, to be the exclusive purchaser of certain firearms and accessories from Romarm/FAC, and that Romarm/FAC is prohibited from

supplying certain firearms and accessories to any other company that would sell them in the United States.

29. M+M is aware that by purchasing firearms and accessories from Romarm and FAC, it is intentionally and improperly causing Romarm and FAC not to perform under its contracts with Century.

30. M+M's purchase of certain firearms and accessories is causing Romarm and FAC to be in breach of its contracts with Century.

31. As a result, Century is being irreparably harmed and is suffering damages in an amount to be determined at trial, but in no event less than \$4 million.

32. Because the tortious interference is willful and wanton, Century is entitled to an award of punitive damages in an amount to be determined at trial.

WHEREFORE, Plaintiffs respectfully request that judgment be entered in their favor for the following relief:

- a. awarding them monetary damages in an amount to be determined at trial, but in no event less than \$4,000,000;
- b. awarding them punitive damages in an amount to be determined at trial;
- c. awarding them costs and disbursements, including reasonable attorney's fees; and
- d. awarding such other and further legal and equitable relief that this Court deems just and proper.

JURY DEMAND

Plaintiffs demand trial by jury of all issues so triable.

Dated: Burlington, Vermont
January 7, 2015



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